

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LIONEL L. SHELL, G-13733,	)	
	)	
Plaintiff(s),	)	No. C 11-2675 CRB (PR)
	)	
v.	)	ORDER OF SERVICE
	)	
G. LEWIS, Warden, et al.,	)	
	)	
Defendant(s).	)	

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Plaintiff, an African-American prisoner at Pelican Bay State Prison (PBSP), has filed a pro se First Amended Complaint (FAC) for damages under 42 U.S.C. § 1983 alleging that he was stabbed by white inmates after prison officials released him to the Facility B main exercise yard. Plaintiff claims that warden G. Lewis, correctional captain R. Bell and correctional officer John Doe were deliberately indifferent to his safety because they knew (or should have known) that white inmates were attacking African-American inmates.

**DISCUSSION**

A. Standard of Review

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must identify cognizable

1 claims or dismiss the complaint, or any portion of the complaint, if the complaint  
2 "is frivolous, malicious, or fails to state a claim upon which relief may be  
3 granted," or "seeks monetary relief from a defendant who is immune from such  
4 relief." Id. § 1915A(b). Pro se pleadings must be liberally construed, however.  
5 Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990).

6 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two  
7 essential elements: (1) that a right secured by the Constitution or laws of the  
8 United States was violated, and (2) that the alleged violation was committed by a  
9 person acting under the color of state law. West v. Atkins, 487 U.S. 42, 48  
10 (1988).

11 B. Legal Claims

12 The Eighth Amendment requires that prison officials take reasonable  
13 measures to guarantee the safety of prisoners. Farmer v. Brennan, 511 U.S. 825,  
14 832 (1994). In particular, prison officials have a duty to protect prisoners from  
15 violence at the hands of other prisoners. Id. at 833; Hearns v. Terhune, 413 F.3d  
16 1036, 1040 (9th Cir. 2005). The failure of prison officials to protect inmates  
17 from attacks by other inmates or from dangerous conditions at the prison violates  
18 the Eighth Amendment when two requirements are met: (1) the deprivation  
19 alleged is, objectively, sufficiently serious; and (2) the prison official is,  
20 subjectively, deliberately indifferent to inmate safety. Farmer, 511 U.S. at 834;  
21 Hearns, 413 F.3d at 1040-41.

22 A prison official is deliberately indifferent if he knows that a prisoner  
23 faces a substantial risk of serious harm and disregards that risk by failing to take  
24 reasonable steps to abate it. Farmer, 511 U.S. at 837. Neither negligence nor  
25 gross negligence constitute deliberate indifference. See id. at 835-36 & n.4.

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1 Procedure 56, and shall include as exhibits all records and incident reports  
2 stemming from the events at issue. If defendants are of the opinion that this case  
3 cannot be resolved by summary judgment or other dispositive motion, they shall  
4 so inform the court prior to the date their motion is due. All papers filed with the  
5 court shall be served promptly on plaintiff.

6 b. Plaintiff must serve and file an opposition or statement of  
7 non-opposition to the dispositive motion not more than 28 days after the motion  
8 is served and filed.

9 c. Plaintiff is advised that a motion for summary judgment  
10 under Rule 56 of the Federal Rules of Civil Procedure will, if granted, end your  
11 case. Rule 56 tells you what you must do in order to oppose a motion for  
12 summary judgment. Generally, summary judgment must be granted when there  
13 is no genuine issue of material fact – that is, if there is no real dispute about any  
14 fact that would affect the result of your case, the party who asked for summary  
15 judgment is entitled to judgment as a matter of law, which will end your case.  
16 When a party you are suing makes a motion for summary judgment that is  
17 properly supported by declarations (or other sworn testimony), you cannot simply  
18 rely on what your complaint says. Instead, you must set out specific facts in  
19 declarations, depositions, answers to interrogatories, or authenticated documents,  
20 as provided in Rule 56(e), that contradicts the facts shown in the defendant's  
21 declarations and documents and show that there is a genuine issue of material  
22 fact for trial. If you do not submit your own evidence in opposition, summary  
23 judgment, if appropriate, may be entered against you. If summary judgment is  
24 granted, your case will be dismissed and there will be no trial. Rand v. Rowland,  
25 154 F.3d 952, 962-63 (9th Cir. 1998) (en banc) (App A).

26 Plaintiff is also advised that a motion to dismiss for failure to exhaust  
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1 administrative remedies under 42 U.S.C. § 1997e(a) will, if granted, end your  
2 case, albeit without prejudice. You must "develop a record" and present it in  
3 your opposition in order to dispute any "factual record" presented by the  
4 defendants in their motion to dismiss. Wyatt v. Terhune, 315 F.3d 1108, 1120  
5 n.14 (9th Cir. 2003).

6 d. Defendants must serve and file a reply to an opposition not  
7 more than 14 days after the opposition is served and filed.

8 e. The motion shall be deemed submitted as of the date the  
9 reply is due. No hearing will be held on the motion unless the court so orders at a  
10 later date.

11 3. Discovery may be taken in accordance with the Federal Rules of  
12 Civil Procedure. No further court order is required before the parties may  
13 conduct discovery.

14 4. All communications by plaintiff with the court must be served on  
15 defendants, or defendants' counsel once counsel has been designated, by mailing  
16 a true copy of the document to defendants or defendants' counsel.

17 5. It is plaintiff's responsibility to prosecute this case. Plaintiff must  
18 keep the court and all parties informed of any change of address and must comply  
19 with the court's orders in a timely fashion. Failure to do so may result in the  
20 dismissal of this action pursuant to Federal Rule of Civil Procedure 41(b).

21 SO ORDERED.

22 DATED: June 1, 2012

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25 CHARLES R. BREYER  
26 United States District Judge  
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